IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.855 of 2007.

Judgment reserved on:30.10.2007.

Date of decision: 13th Nov., 2007.

Narinder Kumar ....Petitioner

-Versus-

Union of India and others ….Respondents

Coram:
The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Petitioner: Mr.Rajneesh Manikatala, Advocate.

For Respondents: Ms.Minakshi Pathania, C.G.S.C. for R-1.
Mr.Shrawan Dogra, counsel for
Respondents 2&3.

Deepak Gupta, J.

The petitioner is employee of the National Institute of Technology, Hamirpur. The short question involved in this case is whether the petitioner is to retire on attaining the age of 58 years or is entitled to continue till the age of 60 years?

The National Institute of Technology (NIT) was earlier known as the Regional Engineering College, Hamirpur. It was managed by a Society. This Society had framed Bye-Laws to govern the service conditions of its employees. Bye-Law 11(iii) which is relevant for our purpose reads as follows:

> "iii)On completion of the period of probation or the extended period of probation as the case may be, the employee shall, if

> his work and conduct during the period of probation has been found satisfactory, shall be confirmed in the post and he shall continue to hold his office till the close of the academic session in which he attains the age of 60 years subject to the disciplinary rules of the College."

This Bye-Law was amended vide notification dated 26.2.1999, relevant portion of the same reads as follows:

> "(b)A non-teaching employee shall, if his work and conduct during the period of probation has been found satisfactory shall be confirmed in the post and shall continue to hold his office/post up to the last date of the month in which he/she attains the age of 60 years."

On 26th June, 2002 the Central Government on the recommendation and advice of the University Grants Commission declared the Regional Engineering College, Hamirpur to be the National Institute of Technology and it was to be treated as a deemed University in terms of Section 3 of the University Grants Commission Act. On 26th June, 2002 itself the Joint Secretary to the Government of India wrote a letter to the Principal, National Institute of Technology in which it was mentioned that all employees of the Regional Engineering College shall continue to hold office in the National Institute of Technology on the same terms and conditions and the same rights and privileges as before. Extract of the relevant portion of this letter reads as follows:

> "Every person (including the Director earlier Principal) employed by the Regional Engineering College, Hamirpur immediately before conversion shall hold office or service in the National Institute of Technology, Hamirpur by the same tenure, at the same remuneration and upon the same terms and

> conditions and with same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same, if this conversion had not taken place. Changes, if any as a result of adoption of new Memorandum of Association (MoA) and the Rules by the Institute shall be referred to the Central Government for consideration on case to case basis."

The National Institute of Technology was also registered as a Society and framed its Memorandum of Association as well as its Rules. Rule 13 which is relevant for the purpose of deciding these petitions read as follows:

> "13.Terms and Conditions of Service of Employees of the Institute:
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> Every person employed by the Regional Engineering College, Hamirpur immediately before these Rules coming into being shall hold office or service in the corresponding Institute by the same tenure, at the same remuneration and upon such terms and conditions and with same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he/she would have held if the Rules were not changed and shall continue to unless and until his/her employment is terminated or until such tenure, remuneration and terms conditions are altered by further change in MOA/Rules."

The Union Cabinet in its meeting held on 19th February, 2003 took a decision to take over the Regional Engineering Colleges (National Institutes of Technologies) and further decided to make them fully funded institutions of the Government of India. Prior to this decision the State Government as well as the Central Government were exercising control over these Institutes/Colleges. Thereafter, on 14th May, 2003, a notification was issued whereby the

Central Government took over total control of the various Regional Engineering Colleges/National Institutes of Technologies including the National Institute of Technology, Hamirpur. On 9th November, 2003 the Ministry of Human Resources Development issued an office memorandum relating to the service conditions of the employees of taken over Regional Engineering Colleges/NITs. However, this did not deal with the retirement age. Thereafter, another office memorandum was issued on 12th November, 2003 which dealt with the retirement age of the non-teaching staff. Clauses 2,3,4 and 5 of this decision which are relevant for our purpose reads as follows:

> "**2.Retirement on Superannuation**:- After careful consideration of the existing provisions relating to retirement on superannuation in various NITs, it has been decided with the approval of the competent authority that henceforth the non-teaching staff of all NITs shall be allowed to serve up to the age of 60 years subject to their fulfilling the following terms & conditions.
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> **3.(i)Provision of Screening**:- A Screening Committee shall be constituted to assess the suitability of all non-teaching employees for their further continuation in service beyond 58 years of age.
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> **(ii)Composition of the Screening Committee**:- The Screening Committee for the purpose shall consist of such members as form part of the Departmental Promotion Committee (DPC) constituted for regular promotion for the respective category of posts as well as one representative each from the Ministry of HRD and that of the IIT of the region in which the NIT is located. The Director and the Registrar of the Institute concerned shall remain personally responsible for

the authenticity of data furnished to the Screening Committee and BOG in this regard.

(iii)Schedule for Screening:- To ensure timely processing of such cases for extension in the age of retirement, the meeting of the Screening Committee shall be held at least twice in a year preferably in the month of April and October every year so that all the cases of the non-teaching staff who are to complete 58 years of age in next cycle of the year are considered in the meeting. Cycle of the year for this purpose would mean that the meeting to be held in say October 2003 should consider cases pertaining to months of April, 2004 to September, 2004 while the meeting to be held in April 2004 are to consider cases pertaining to the months of October 2004 to March 2005 and likewise. This procedure shall be followed across all NITs including in those NITs where the existing age of retirement for non teaching is already 60 years of age. However, such employees as have less than six months of service before their superannuation from the date of issue of this order shall be exempted from the purview of screening procedure.

4.Consideration by BOG:- The recommendation of the Screening Committee shall be placed before Board of Governors (BOGs) of the respective NITs which shall take a final view in this regard. Only those employees whose names are approved by the BOG shall be allowed to serve up to the age of 60 years while the remaining such employees shall retire at the age of 58 years of age.

5.Date of Effect:- This provision of retirement shall come into effect from the month in which it is adopted by the Board of Governors (BOGs) of the respective NITs."

We have heard Sh.Rajneesh Manikatala, learned counsel for the petitioners and Sh.Shrawan Dogra, learned counsel for the NIT.

A perusal of the various documents referred to above clearly shows that the age of retirement of the non teaching staff in the Regional Engineering college was 60 years. When the College was converted into a NIT it was clearly held out that the services of the employees would be taken over on the same terms and conditions and the age of retirement was retained at 60 years. Thereafter, the College was taken over by the Central Government as a fully funded and controlled Institution of the Central Government. Even thereafter the age of superannuation continued to be 60 years but vide memo dated November 12, 2003 it was decided that a Screening Committee would assess suitability of non-teaching employees for their further continuation in service beyond 58 years. The petitioner in the writ petition has alleged that in all other similar Institutions under the control of the Central Government the age of superannuation is 60 years. This fact has not been denied by the respondents.

The stand of the respondents is that the employees of the erstwhile Regional Engineering Colleges in the State of Himachal Pradesh and Punjab were getting higher scales of pay than their counterparts in other States. Therefore, since they are getting the benefit of higher scale of pay their age of superannuation would be as per the State Service Rules. Sh.Dogra has relied upon a clarification sent by the Ministry of Human Resources Development

to the Director, National Institute of Technology, Hamirpur on 13th June, 2007, the relevant portion of which reads as follows:

Sr.No.	Queries	Clarifications
1.	What will be the age of superannuation of non-teaching staff getting pay in HP State pay scales?	The age of superannuation would be 60 years of age, provided the employee is working in the Central Scale of pay. However, those who have already retired before attaining the age of 60 years, such cases would be treated as closed. For State Government Scales of Pay, the age of superannuation would continue as per the State Service conditions.

We are unable to accept the stand of the respondents. As stated above, the age of retirement of the employees in the Regional Engineering College even when they were getting the scales as provided by the State of Himachal Pradesh was 60 years and not 58 years. At that time the Society which governed and managed the Regional Engineering College in its wisdom took a decision that the retirement age of the non-teaching staff should be 60 years. When the services of the employees were taken over they were informed that their services would not be changed to their detriment. Thereafter, the age of retirement continued to be 60 years. Even in all other Institutes in the Country governed by the Central Government, the age of retirement is 60 years. The only difference is that the employees of the NIT, Hamirpur are getting higher scales of pay. This is due to the peculiar fact that these employees were already in a higher scale of pay before their Institutions were taken

over by the Central Government. This fact cannot be used against them to reduce their age of retirement.

It is also obvious that the respondent Institute was of the same view since it placed the case of the petitioner before the Screening Committee. We are not going into the question whether the service conditions of the petitioner could have been changed to his detriment without issuing notice to him and without obtaining any option from them. For the purpose of the present case we are assuming that this was a validly imposed condition.

In the present case we find that the Screening Committee took up the case of the petitioner to assess the suitability for continuation of service beyond 58 years. However, the Screening Committee did not actually assess the suitability of the petitioner but instead referred the matter to the Board of Governors to decide the following questions:

> "(i)Whether the Non-Teaching Employees of NIT, Hamirpur may be allowed to retire on attaining the superannuation age of 60 years or 58 years.
> (ii)Whether Screening to assess the suitability of above named employees for their continuation in service beyond 58 years age may be done or not."

The Board of Governors thereafter took the following decision:

> "The Board discussed the matter at length and desired that the decision contained in letter No.F.7-9/2006.TS.III dated 11th May, 2007 be complied with and official be superannuated at the 58 years of age."

This decision of the Board of Governors is totally incorrect in view of what has been held by us above and in view of the decision rendered by us in CWPs No.750 & 751 of 2007 dated 23.7.2007. It was the job of the Screening Committee to assess the suitability of the petitioner. This the Screening Committee has failed to do. The stand which the respondents have now taken is that since the petitioner was getting the higher pay scale prescribed by of the State of H.P. he was to superannuate at the age of 58 years as per the Rules of the State of H.P. This argument cannot be accepted since earlier also the age of retirement in the same pay scale was 60 years. Further the petitioner has also given an undertaking that he may be paid his pay as per the rationalized Central Government pay scales. This knocks the very bottom out of the case of the respondents. The employees should have been given a chance and told in clear terms that if they did not change to the rationalized Central Government pay scales they would retire at the age of 58 years. This option was never given to them.

On behalf of the respondents it is urged that the decision of the Board of Governors is final. This argument is without any basis. In fact the Board of Governors have not taken any decision of their own. They have only directed that the petitioners be superannuated at the age of 58 years in view of the decision contained in letter dated 11th May, 2007. We have already dealt with all the other questions.

Keeping in view all the facts and circumstances of this case, we are of the considered view that it was the duty of the Screening

Committee to assess the suitability of the petitioner. The Board of Governors had no right or authority to hold that the petitioner be superannuated at the age of 58 years without assessing his suitability. We accordingly set-aside the decision of the Board of Governors. The petitioner completes 58 years of age this month. Therefore, we direct that the Screening Committee shall assess the suitability of the petitioner for continuation in service beyond 58 years upto 60 years as per established norms and if the petitioner is found so suitable he shall be continued in service till the age of 60 years. The Screening Committee may take its decision by 25th November, 2007. In case the Screening Committee does not decide the matter by the said date the petitioner shall be allowed to continue in service till the Screening Committee and consequently the Board of Governors take a decision in the matter.

The petition is allowed in the aforesaid terms. The petitioner is also held entitled to costs of the petition which are assessed at Rs.5000/-.

In view of the disposal of the writ petition, CMP No.1456 of 2007 is also disposed of.

(Deepak Gupta),
Judge

November 13, 2007.
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(V.K. Ahuja),
Judge